

**THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF MISSOURI**

MELISSA ALBERSON,

Plaintiff,

vs.

FRANKIE REYES and
GARDA CL SOUTHWEST, INC.,

Defendants.

CASE NO. 4:19-cv-00548

NOTICE OF REMOVAL

PLEASE TAKE NOTICE that, pursuant to 28 U.S.C. Sections 1332 and 1441(b), Defendant Frankie Reyes, (hereinafter referred to as “Defendant Reyes”), contemporaneously with the filing of this notice, is effecting the removal of the below referenced action from the Circuit Court of Jackson County, Missouri, to the United States District Court, Western District of Missouri. The removal is based, specifically, on the following grounds:

PLEADINGS, PROCESS, AND ORDERS

1. On January 25, 2019, Plaintiff Melissa Alberson (hereinafter referred to as “Plaintiff”) commenced the above-entitled civil action in the Circuit Court of Jackson County by filing a Petition for Damages therein entitled Petition for Damages Case No. 1916-CV02399.

2. On June 12, 2019, Defendant Reyes received service of the lawsuit and summons.

3. Defendant Reyes has not filed an answer to Plaintiff’s Petition for Damages.

DIVERSITY

4. This is a civil action over which this Court has original jurisdiction under 28 U.S.C. § 1332, in that it is a civil action where the matter in controversy exceeds the sum of \$75,000.00, exclusive of interest and costs, and is between citizens of different states. See Petition for Damages -

Accordingly, this action is one that may be removed to this Court by Defendant pursuant to 28 U.S.C. § 1441.

5. It is Defendant Reyes' information and belief that Plaintiff was, at the time of the filing of this action, and presently remains, a resident and domiciliary of the State of Indiana.

6. Defendant Reyes, at the time of the filing of this action, and presently remains, a resident, and domiciliary of the State of Texas.

7. Counsel for Defendant Reyes is also representing Defendant Garda in this matter. Defendant Garda consents to the removal and will be filing a consent to removal after the removal is finalized.

8. At the time this action was commenced, Defendant Garda is a corporation organized under the laws of the State of Texas with its principal place of business in the State of Florida.

AMOUNT IN CONTROVERSY

9. Plaintiffs' Petition for Damages sets forth causes of action for negligence. See Petition for Damages.

10. Plaintiff alleges that on or about September 26, 2016, Plaintiff was involved in a car accident involving Defendant Reyes. Petition for Damages, ¶¶ 8-11.

11. As a result of the damage, Plaintiff alleges that she has suffered substantial damages in an amount in excess of \$25,000. Petition for Damages, p. 4 Wherefore Clause.

12. The amount in controversy is determined from the allegations in the complaint. 28 U.S.C. § 1446(c)(2); *See St. Paul Mercury Indemnity Co. v. Red Cab Co.* (1938) 303 U.S. 283, 289.

13. As noted above, here, Plaintiff alleges that she has suffered a considerable amount in damages. Petition for Damages, ¶¶ 17-22. Accordingly, this Court's jurisdiction is properly invoked. *See Quinn v. Kimble*, 228 F. Supp. 2d 1038, 1040-41 (E.D. Mo. 2002) (denying motion to remand

because plaintiff alleges he suffered head, neck, and back injuries; incurred medical expenses and will incur further such expenses); *McLauchin v. Sight*, 2016 U.S. Dist. LEXIS 99983 at *2 (W.D. Mo. 2016) (quoting *James Neff Kramper Family Farm P'ship v. IBP, Inc.*, 393 F.3d 828, 833 (8th Cir. 2005)) (stating the removing party does not need to “prove that ‘the damages *are* greater than the requisite amount,’ but that ‘the claims . . . could, that is might, legally satisfy the amount in controversy requirement’”). Plaintiff has also sent settlement demands to Defendant Garda in an amount exceeding \$75,000.

14. Specifically, Plaintiff pleads she has incurred over \$25,000 in medical damages. Petition for Damages, p. 4¶ Wherefore clause. The amount in controversy exceeds the \$75,000.00 statutory minimum. Therefore, federal jurisdiction is proper. Removal is effected without waiving any defenses.

VENUE OF REMOVAL

15. The Circuit Court of Jackson County, Missouri at Kansas City is located in the United States District Court for the Western District of Missouri, Western Division. 28 U.S.C. § 105(b)(1). This Court is part of the district and division in which the action was filed - Jackson County, Missouri. Thus, venue is proper because this is the “district and division embracing the place where such action is pending.” 28 U.S.C. § 1441(a); see also 28 U.S.C. § 1446(a).

TIMELINESS OF REMOVAL

16. This Notice of Removal is timely filed in that it has been filed within thirty (30) days after receipt of Plaintiff s Petition for Damages, which indicated that the matter is removable. 28 U.S.C. § 1446(b)(1). Further, the instant removal is within one year of the commencement of the underlying action as required by 28 U.S.C. § 1446(c)(1). As noted, Plaintiff commenced this action on January 25, 2019.

17. For the foregoing reasons, this Court has original jurisdiction under 28 U.S.C. Sections 1332 and 1441(b).

18. Pursuant to 28 U.S.C. § 1446(d), this Notice of Removal will be served upon all adverse parties and will be filed promptly in the State Court Action.

19. Pursuant to 28 U.S.C. § 1446(a), Defendants are filing contemporaneously herewith a current docket sheet from the State Court Action and a copy of all the pleadings and papers filed with the state court.

20. As of the date of this notice of removal, the Court's scheduling order has been entered by Judge James F. Kanatzar.

WHEREFORE, Defendant Reyes removes this action from the Circuit Court of Jackson County, Missouri to the United States Western District of Missouri.

/s/ Jeremy K. Schrag

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Attorney for Defendant Reyes

CERTIFICATE OF SERVICE

I certify that on July 12, 2019, I did cause a true and correct copy of the above Notice of Removal to be placed in the United States Mail, with first class postage prepaid thereon, and addressed as follows:

Jeremiah Johnson
The Law Offices of Jeremiah Johnson, LLC
1627 Main Street, Suite 900
Kansas City, MO 64108

Jason Ludwig
Carson & Coil
515 East High Street
Jefferson City, MO 65101

I also hereby certify that on July 12, 2019, a true and correct copy of the above Notice of Removal was sent via electronic mail to the following:

Jeremiah Johnson
jeremiah@kcatty.com

Jason Ludwig
Jason.L@carsoncoil.com

/s/ Jeremy K. Schrag

Jeremy K. Schrag